

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.35613 of 1997

ORAL ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to the Award dated 25-2-1997 passed in I.D.No.286 of 1993 on the file of the Industrial Tribunal-cum-Labour Court, Warangal and to quash the same as arbitrary, illegal and consequently to direct the 2nd respondent to reinstate the petitioner into service with all consequential benefits.

It appears, petitioner was appointed as a Conductor in the respondent-Corporation in the year 1982. According to the petitioner, he had unblemished record of service till a charge memo was issued to him on 4-3-1993 framing the following charges:

- (i) For having left to Raghunathapallem at about 6.00 hrs leaving the failed vehicle No.APZ-1885 on the Road unguarded while you were on duty on 19-10-92 which is a misconduct under Regulation No.28(ix)(a) and (xxxi) of APSRTC Employees (Conduct) Regulations,1963;
- (ii) For having involved in an illegal contact with a woman Smt.K.Venkataramamma, W/o Prasad Rao, R/o Raghunathapalem and caught and also involved in a quarrel with them and got fracture to your leg while you were on duty on 19-10-1992 and tarnished the image of the Corporation, which amounts to misconduct under RegulationNo.28 (xxxi) and (xxxii) of APSRTC Employees (Conduct) Regulations,1963.

Petitioner submitted his explanation for the said charge sheet. Having not satisfied with the explanation submitted by the petitioner, the respondent-management directed for a detailed enquiry into the matter. After conducting a detailed enquiry, petitioner was removed from service by an Order dated 20-11-1993 passed by the 2nd respondent. Aggrieved by the same, petitioner carried the matter in

appeal before the Divisional Manager. However, the appeal was rejected on 3-2-1994. Having no other option, petitioner raised a dispute under Section 2-A(2) Industrial Disputes Act, 1947 (for short 'the Act') before the Industrial Tribunal-cum-Labour Court, Warangal in I.D.No.286 of 1993. Before the Tribunal, no oral or documentary evidence was adduced by either side. Basing on the material available on record relating to the domestic enquiry, the Tribunal came to the conclusion that the charges framed against the petitioner were proved and he was given full opportunity to defend himself; therefore, no case was made out to interfere with the removal order passed by the respondent-management and as such, the claim petition under Section 2-A(2) of the Act was rejected by an award dated 25-2-1997. Challenging the same, the present Writ Petition is filed.

Learned counsel for the petitioner strenuously contended that neither the enquiry was properly conducted nor the persons on whose statements, the enquiry was launched, i.e. Smt.Venkataramamma and her son Srinivasa Rao, were examined in the domestic enquiry. Therefore, the findings recorded by the Enquiry Officer as confirmed by the Tribunal are liable to be set aside. Further, assuming that the charges framed against the petitioner are proved, they are trivial in nature and do not warrant removal of the petitioner from service and the punishment imposed is disproportionate to that of the misconduct alleged against the petitioner.

Whereas, learned standing counsel for the 2nd respondent-Corporation contended that the Tribunal, after a detailed consideration of the entire material made before it, came to the conclusion that the enquiry conducted by the management was just, proper and valid and further on the basis of evidence on record, it was found that the petitioner is guilty of the charges; thus upheld the termination Order

passed by the 2nd respondent. The findings recorded by the Tribunal are purely based on facts and evidence before it. Therefore, no interference can be made by this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Award and other material made available on record.

Firstly, the charge against the petitioner was that he left to Raghunathapalem at about 6.00 hours leaving the failed vehicle—APZ 1885 on the road unguarded while he was on duty on 19-10-1992. Secondly, he was involved in illegal contact with a woman at Raghunathapalle and caught red handed and also involved in a quarrel with Prasad Rao, the husband of K.Venkataramamma and got fracture to his leg while on duty on 19-10-1992 and thus, tarnished the image of the Corporation, which amounts to misconduct under Regulation 28(xxxi) and (xxxii) of APSRTC Employees (Conduct) Regulations, 1963. Thus, the sum and substance of the charge is that the petitioner left the failed bus unguarded. Petitioner did not dispute as to this fact, though he tried to explain saying that his sister's son was not well; therefore, he went to see the boy at Raghunathapalle for 10 minutes and he was involved in an unforeseen incident, which resulted in a quarrel and then a complaint before the police by himself. But, it is unfortunate that the Corporation has taken up this incident and framed a charge saying that the petitioner is involved in illegal contact with a woman, by name, K.Venkataramamma, W/o Prasada Rao, resident of Raghunathapalle and was caught redhanded. It is neither desirable on the part of the Management to take up such conduct of the petitioner as a domestic enquiry, particularly, by invoking Regulation 28((xxxi) and (xxxii) of the APSRTC Employees' (Conduct)

Regulations, 1963. The Management is always at liberty to find fault with the petitioner when he left the failed bus unguarded, particularly when the Driver was away. But, it is not desirable for the management to go into such allegations as in charge No.2 and enquire them, in the guise of domestic enquiry. This fact was not properly appreciated by the Tribunal and misguided itself in concurring with the findings recorded by the disciplinary authority as to the misconduct of the petitioner i.e., illegal contact with an outside woman. Insofar as charge No.1 is concerned, the petitioner himself admitted that he went to Raghunathapalle to see his sister's son, who was suffering from fever. Whether it was a ruse or whether he went for some other purpose, the fact remains that in dereliction of his duties, he went to Raghunathapalle by leaving the failed bus unguarded.

In the circumstances, it cannot be said that the Corporation cannot take any action against the petitioner. In fact, the Tribunal also rightly found that the petitioner was guilty of the first charge as found by the Enquiry Officer. But, insofar as the second charge is concerned, it is none of the business of the Management to enquire into such charges and in the peculiar circumstances of the case, learned counsel for the petitioner before the Tribunal has strenuously contended that non-examination of Smt. Venkataramamma and her son Srinivasa Rao is fatal to the enquiry. However, the Tribunal recorded a finding that non-examination of Venkataramamma and her son in the domestic enquiry does not vitiate the enquiry; therefore, it must be deemed that the petitioner was given full and fair opportunity and this charge was also proved. I am of the opinion that the finding recorded by the Enquiry Officer as confirmed by the Tribunal against the second charge is not only erroneous, but also perverse.

In the light of the above, I am of the opinion that the punishment

of removal of the petitioner from service is shockingly disproportionate to that of the misconduct alleged against him. Further, it is to be noticed that no criminal case has been registered against the petitioner nor the criminal complaint purported to have been filed by the petitioner on 19-10-1992 with the Sub-Inspector of Police, Khammam was taken up and proceeded with. In the counter filed before the Tribunal, the Management did not dispute as to the unblemished service rendered by the petitioner for about 11 years before his removal. Therefore, I am of the opinion that the Tribunal has not properly exercised its powers vested under Section 11-A of the Act in passing the impugned Award. As such, I deem it appropriate to modify the Award passed by the Tribunal to the following effect:

“In the result, an Award is passed holding that the workman is entitled for reinstatement with continuity of service and attendant benefits, but without any back wages. The Management shall reinstate the workman into service forthwith”.

With the above modification of the impugned Award, the Writ Petition is disposed of. No order as to costs.

21-3-2007

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